

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **05 -MSRC- 001**

COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING

COMPLAINANT

vs.

FINAL ORDER REGARDING JERRY L. MORMAN

JERRY L. MORMAN

RESPONDENT

This matter having come before the Mine Safety Review Commission (Commission) on the Motion for Default Judgment by the Complainant, Office of Mine Safety and Licensing (OMSL) and having no Answer or other Motion or responsive pleading filed by Respondent **Jerry L. Morman**, and the members of the Commission having reviewed the Motion filed on May 17, 2005 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY **ORDERED** as follows:

1. The Motion for Default Judgment is **GRANTED**;
2. The formal hearing and pre-hearing conference are **CANCELLED**;
3. The Commission Orders and incorporates the disciplinary measures as provided in the Motion for Default Judgment as follows as a material part of this **FINAL ORDER**: (1) Morman's underground miner's certificate (#) shall be probated for a period of one (1) year; (2) that during this one year period of probation, that Morman shall comply will all state and federal mine safety laws and regulations, and that the willful violation by Morman of any of said laws or regulations may result in OMSL filing a motion with the Commission to revoke his underground miner's certificate for the remainder of the probationary period; (3)

Morman shall take eight (8) hours of special safety training from OMSL within 45 days of the date of the service of this Final Order as provided in the certificate of service below.

4. This Final Order only resolves the matters referenced herein, and any new enforcement action or subsequent penalties imposed during any probationary period are in addition to and not in lieu of those that may be sought by OMSL for the acts or omissions during that probationary period. This Final Order in no way prohibits OMSL from investigating or filing legal action based upon other activities or omissions by the Respondent not arising from the factual basis of the original violation and resolved herein.
5. This Final Order shall be considered to constitute a “first offense” as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent, resulting in an adjudication of guilt by the Commission, shall be deemed “subsequent offenses” as defined by 805 KAR 8:010, Section 1(13);
6. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and
7. Appellate rights: Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in

this proceeding and shall include a statement of the grounds upon which review is requested. A copy of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of record in this proceeding.

Entered this the 26TH day of MAY 2005.

A handwritten signature in black ink, appearing to read 'DM Davidson', written over a horizontal line.

DENISE MOORE DAVIDSON, CHAIR
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this 6TH day of June 2005:

JERRY L. MORMAN
1003 PINEVIEW LANE
LOT 24
PAINTSVILE KY 41240
Respondent

And by messenger mail to:

C. Michael Hains
~~HON. TONY OPPEGARD~~ *by BAT*
GENERAL COUNSEL
OFFICE OF MINE SAFETY & LICENSING
1025 CAPITAL CENTER DRIVE
FRANKFORT KY 40601

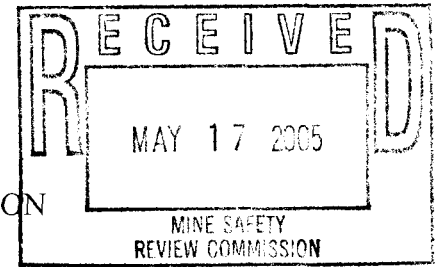
And the original shall be kept on file:

Mine Safety Review Commission
132 Brighton Park Blvd.
Frankfort Ky 40601

Bryon Alan Thompson

Bryon Alan Thompson
General Counsel
Mine Safety Review Commission

KENTUCKY MINE SAFETY REVIEW COMMISSION



KY. OFFICE OF MINE SAFETY & LICENSING)
)
Complainant)
)
v.) Administrative Action No. 05-MSRC-001
)
)
JERRY L. MORMAN)
)
Respondent)

MOTION FOR DEFAULT JUDGMENT

Comes the Complainant, the Kentucky Office of Mine Safety & Licensing (“OMSL”), through counsel, pursuant to KRS 13B.080 (6), and hereby moves the Mine Safety Review Commission (“MSRC”; “the Commission”) for a default judgment against Jerry L. Morman, the Respondent in the above-styled disciplinary proceeding.

In support of its motion, OMSL states that it filed its Complaint herein on January 10, 2005.¹ On January 13, 2005, the Commission found probable cause against Morman. Also on January 13th - in its “Order ... Scheduling Formal Hearing [for July 14, 2005]”- the MSRC ordered Morman to file his written Answer to OMSL’s Complaint within 20 days (i.e., on or before **February 2, 2005**). The Commission stated that “Failure to file an Answer may result in the allegations being deemed admitted and the issuance of a Final Order to that effect” (emphasis in original).

¹ The Complaint alleged that Morman had been caught with smoking articles on his person underground and that he had admitted to the mine operator that he had been smoking in the mine.

KRS 13B.080 provides, in relevant part, that “If a party properly served under KRS 13B.050 fails to ... comply with the orders of a hearing officer, the hearing officer may ... issue a default order granting or denying relief as appropriate...”.

Morman’s Answer was due approximately 3 1/2 months ago. Nonetheless, as of this date, Morman has not filed an Answer to the charges against him. Nor has he requested additional time to do so, or contacted the undersigned as to why he has not defended against this action.² In light of Morman’s failure to file an Answer to OMSL’s Complaint, or to otherwise defend against this action, the MSRC should issue a default judgment against Morman, which deems the allegations against him to be true, and orders the relief sought by OMSL.

Specifically, the Commission should order: (1) the probation of Morman’s underground miner’s certificate (#) for a period of one year; (2) that during his one-year period of probation, that Morman shall comply with all state and federal mine safety laws and regulations, and that the willful violation by Morman of any of said laws or regulations may result in OMSL filing a motion with the Commission to revoke his underground miner’s certificate for the remainder of the probationary period;³ (3) Morman to take 8 hours of special safety training from OMSL within 45 days of the date that judgment is entered against him;⁴ and (4) that its final order regarding Morman constitute a “first offense”- as that term is defined at

² The undersigned wrote to Morman on April 7, 2005, and advised him that a default judgment could be entered against him for failing to file an Answer.

³ The MSRC should also order that if the circumstances warranted, OMSL would also retain the right to file a separate action with it seeking other penalties against Morman for his actions.

⁴ Said special safety training should be in addition to any annual refresher training or other safety training that Morman is legally required to take.

805 KAR 8:010, Section 1 (5) - and that any future adjudication against Morman by the Commission, regarding a separate alleged offense, will be deemed a "subsequent offense" as defined at 805 KAR 8:010, Section 1 (13).

WHEREFORE, for the foregoing reasons, OMSL requests that its motion for default judgment be granted, and that it be granted the relief sought against Morman in its Complaint.

Respectfully submitted,




TONY OPPEGARD
General Counsel

KY. OFFICE OF MINE SAFETY & LICENSING
P.O. Box 2244
Frankfort, Kentucky 40602
(502) 573-0146, x236

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion for Default Judgment was mailed this 16th day of May, 2005, to Jerry L. Morman, 1003 Pineview Lane Lot 24, Paintsville, Kentucky 41240.



TONY OPPEGARD
General Counsel
KY. OFFICE OF MINE SAFETY & LICENSING